1185

SUPREME COURT OF THE UNITED STATES.

No. 78.

SUSAN LAWRENCE, PLAINTIFF IN ERROR,

vs.

ROBERT McCALMONT AND AL.

IN ERROR TO THE CIRCUIT COURT U. S. SOUTHERN DISTRICT OF NEW YORK.

INDEX.

	Original.	Print.
Writ of error	1	2
Citation and service	3	2
Clerk's certificate	4	3
Declaration of plaintiff	5	3
Replication of defendant	13	7
Issue joined—jury sworn	14	8
Judgment	15	8
Bill of exceptions	17	24
Motion for a certificate of division or re-argument, denied	44	24

J. & G. S. Gideon, Printers.

UNITED STATES OF AMERICA, *ss:*

[L. S.] The President of the United States of America, to the judges of the circuit court of the United States, for the southern district of New York, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea, which is in the said circuit court before you, or some of you, between Robert McCalmont, Hugh McCalmont, and William Johnson Newell, plaintiffs, and Susan Lawrence, defendant, a manifest error hath happened to the great damage of the said defendant, as by her complaint appears: We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, at the city of Washington, in the District of Columbia, together with this writ, so that you have the same at Washington on the 2d Monday of January next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the law and custom of the United States, should be done.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, this second Monday of January, in the year of our Lord one thousand eight hundred and forty-two, and of the independence of the United States the sixty-sixth.

J. W. METCALF,

Clerk of the circuit court of the United States for the southern district of New York, in the 2d circuit.

The answer of the honorable Smith Thompson and Samuel R. Betts, judges of the circuit court of the United States for the southern district [of] New York, to the within writ, containing the citation, record, and proceedings in the within cause, as appears by the schedules annexed.

Attest: J. W. METCALF, *Clerk.*

By the honorable Samuel R. Betts, one of the judges of the circuit court of the United States for the southern district of New York, in the second circuit, to Robert McCalmont, Hugh McCalmont, and William Johnstone Newell:

Whereas, Susan Laurence lately issued out of the circuit court of the United States for the southern district of New York, in the

second circuit, a writ of error directed to the judge of the circuit court of the United States, for the southern district of New York, in the second circuit, stating, that in the record and proceedings, as also in the rendition of the judgment of a plea in the said court before the judge thereof, between Robert McCalmont, Hugh McCalmont, and William Johnstone Newell, plaintiffs, and Susan Lawrence, defendant, a manifest error hath happened, to the great damage of the said defendant.

And whereas, for the correction of that error in due manner, the said writ has been issued, returnable at the next stated Supreme Court of the United States, to be held at the city of Washington on the second Monday of January next; you are, therefore, hereby cited to appear before the said Supreme Court, at the city of Washington on the said second Monday of January next, to do and receive what may appertain to justice to be done in the premises.

Given under my hand at the city of New York, in the southern district of New York, in the second circuit, the 26th day of December, in the year of our Lord one thousand eight hundred and forty-two, and of the independence of the United States the sixty-seventh.

SAM. R. BETTS.

Due service of the above citation admitted.

DAN. LORD, Jr.,
Attorney for R. McCalmont and others.

Dec. 27, 1842.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, James W. Metcalf, clerk of the circuit court of the United States of America for the southern district of New York, second circuit, do hereby certify, that the writings annexed to this certificate are true copies of their respective originals, on file and remaining of record in my office.

In testimony whereof, I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, second circuit, this twenty-seventh day of December, in the year of our Lord one thousand eight hundred and forty-two, and of the independence of the said United States the sixty-seventh.

[L. S.]

J. W. METCALF.

CIRCUIT COURT OF THE UNITED STATES,
For the Southern District of New York, in the Second Circuit:

Pleas before the judges of the circuit court of the United States for the southern district of New York, in the second circuit, held at the City Hall, in the city of New York, on the twenty-fourth day of July, in the year of Lord one thousand eight hundred and forty.

Witness: ROGER B. TANEY, *Chief Justice.*
BETTS, *Clerk.*

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Robert McCalmont, Hugh McCalmont, and William Johnston Newall, aliens, subjects of her majesty the Queen of the United Kingdom of Great Britain and Ireland, put in their place Daniel Lord, jr., their attorney, against Susan Lawrence, a citizen of the State of New York, in a plea of trespass on the case.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Susan Lawrence, a citizen of the State of New York, puts in her place Griffin and Havens, her attorneys, at the suit of Robert McCalmont, Hugh McCalmont, and William Johnston Newall, in the plea aforesaid.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Be it remembered, that on the second day of July, of the term of April in the year of our Lord one thousand eight hundred and forty, comes Robert McCalmont, Hugh McCalmont, and William Johnston Newall, aliens, subjects of her majesty the Queen of the United Kingdom of Great Britain and Ireland, plaintiffs, before the judges of the circuit court of the United States for the southern district of New York, in the second circuit, at the city hall of the city of New York, by Daniel Lord, jr., their attorney, and bring into the said court before the aforesaid justices thereof now here, their certain bill against Susan Lawrence, defendant, a citizen of the State of New York, being in the custody, &c., of a plea of trespass in the case, which said bill follows in these words:

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Robert McCalmont, Hugh McCalmont, and William Johnstone Newall, aliens, subjects of her majesty the Queen of the United Kingdom of Great Britain and Ireland, plaintiffs, by Daniel Lord, jr., their attorney, complain of Susan Lawrence, defendant, a citizen of the State of New York, in a plea of trespass on the case on promises. For that whereas, at the several times hereinafter mentioned, the said plaintiffs were aliens, subjects of the Queen of the United Kingdom of Great Britain and Ireland, and copartners in trade at London, under the firm of McCalmont, Brothers & Co., and the defendant was and is a citizen of the State of New York, to wit, at the city of New York, in the southern district of New York; and whereas, the said Susan Lawrence heretofore, to wit: on the seventeenth day of December, in the year of our Lord one thousand eight hundred and thirty-eight, by a certain writing or guarantee by her signed, in consideration of certain persons then trading in copartnership under the name or firm of J. & A. Lawrence, having a credit with the said plaintiffs, copartners trading together under the name of McCalmont, Brothers, & Co., and in further consideration of one dollar to her paid by the said plaintiffs, the receipt of which she did thereby acknowledge, did engage to the said plaintiffs that the said per-

sons trading under the said firm, should fulfil the engagements they had made and should make with the said plaintiffs, for meeting and reimbursing the payments which the said plaintiffs might assume under such credit, at the request of the said J. & A. Lawrence, together with the charges of the said plaintiffs; and did also guaranty the said plaintiffs from all payments and damages by reason of the default of the said J. & A. Lawrence in the premises; and in and by the said writing, did further declare and agree, that the said plaintiffs were to consider the said writing a standing and continuing guaranty, without the necessity of the said plaintiffs apprising the said defendants, from time to time, of their engagements and advances for the said J. & A. Lawrence; and in case of a change of copartners in the firm of the said plaintiffs, or of the said J. & A. Lawrence, the said guaranty was to apply and continue to transactions afterwards between the firms as changed, until notified by the said defendants to the contrary.

And the said plaintiffs aver, that at the date aforesaid of the writing or guaranty aforesaid, to wit, on the twenty-first day of November, in the year of our Lord one thousand eight hundred and thirty-eight, the said J. & A. Lawrence had credit with the said plaintiffs, granted by the copartnership firm of John Gihon & Co., agents of the plaintiffs in this behalf, of ten thousand pounds sterling, to be availed of within six months from the last mentioned date, in such drafts as the said J. & A. Lawrence should direct, at four months date, against actual shipments of goods for their account and coming to their address, the said goods to be forwarded through the said plaintiffs or their agents; upon, and in consideration of the granting of which credit, the said J. & A. Lawrence did then and there agree with the said plaintiffs to cover their acceptances of bills of exchange, to be drawn under the said credit before the maturity of the said bills, by direct remittances from this country, namely, the United States of America, of approved bills of exchange, payable sixty days after sight, the seconds of exchange to be handed to the copartnership firm of John Gihon & Co., and that the plaintiffs were to charge one per cent. commission on the amount which should be accepted, and to keep the accounts between them, the plaintiffs and the said J. & A. Lawrence, at five per cent. interest per annum.

And the said plaintiffs further say, that afterwards, to wit, on the twelfth day of June, in the year of our Lord one thousand eight hundred and thirty-nine, it was further mutually agreed between the said J. & A. Lawrence and the said plaintiffs, in consideration of the agreement by the party stipulating on each side to the other party respectively, that, with reference to the said agreement above mentioned, made between the parties last mentioned on the twenty-first day of November, A. D. 1838, whereby a credit was granted on the said plaintiffs in favor of the said J. & A. Lawrence, for ten thousand pounds sterling, to be drawn within six months

from the date last mentioned, that the said agreement and credit should be received for a like period, namely, for six months from the date of the twelfth day of June last aforesaid, and under the same stipulations as the credit above mentioned, with the proviso that the bill of exchange, under such renewed credit, should be drawn by or in favor of parties permanently resident in Europe; and if made from the Continent, they should be made at the customary date—say three months.

And the said plaintiffs further aver, that afterwards, and after the date of the said letter of guaranty of the said defendant, and the defendant having given no notice of terminating her said guaranty, and in reliance in the same, the said plaintiffs gave credit to the said J. & A. Lawrence, by making acceptance of divers bills of exchange, drawn on their behalf, and addressed to the said plaintiffs, to divers large amounts, which bills of exchange were covered by the said J. &. A. Lawrence, according to their agreements aforesaid, to wit, at the city of New York, in the said southern district of New York.

And the plaintiffs further aver, that afterwards, and after the twelfth day of June, in the year of our Lord one thousand eight hundred and thirty-nine, the said plaintiffs, relying upon the said guaranty of the said defendants, did give further credit to the said J. & A. Lawrence, according to the agreements aforesaid with them, by accepting divers other bills of exchange in behalf of the said J. & A. Lawrence, drawn within six months from the twelfth day of June last aforesaid, by or in favor of parties permanently residing in Europe, and when made from the Continent, at the customary date of three months; and which last mentioned bills of exchange were drawn against actual shipments of goods for the account of the said J. & A. Lawrence, and coming to the address of and forwarded through the said plaintiffs or their agents, which acceptances last mentioned are as follows, that is to say: one acceptance on the first day of July, in the said year of our Lord one thousand eight hundred and thirty-nine, of a bill of exchange for fifteen hundred pounds sterling; another acceptance on the thirteenth day of July, of the same year, of a bill of exchange for one thousand pounds sterling; another acceptance on the seventeenth day of July, of the same year, of a bill of exchange for two thousand pounds sterling; another acceptance on the twenty-ninth day of July, in the same year, of a bill of exchange for two thousand pounds sterling; another acceptance on the tenth day of August, of a bill of exchange for five thousand seven hundred and forty-one pounds sixteen shillings, sterling; of which last mentioned acceptance, five thousand pounds was for account of the said J. & A. Lawrence; all of which said five bills of exchange last mentioned, were payable four months after the date of the said bills of exchange respectively.

And the said plaintiffs further say, that in and upon the said several matters in the said guaranty of the said defendant referred,

sundry charges accrued to a large amount in favor of the plaintiffs against the said J. & A. Lawrence, namely, for shipping charges paid in the forwarding of the goods forwarded by the plaintiffs for the defendants in the said agreements referred to, a large sum, to wit, five hundred dollars; for interest, a large sum of money, namely, five hundred dollars; for postage of letters between the parties, or relating to the affairs in the said guaranty referred to, a large sum, namely, twenty-five dollars; and for commissions of the plaintiffs for their services in the premises, another large sum of money, to wit, two thousand dollars; which said bills of exchange, so accepted by the plaintiffs as aforesaid, with the said charges, in the whole amount to sixty thousand dollars.

And the plaintiffs further aver, that the said J. & A. Lawrence did not cover the said five acceptances last mentioned, or any of them, nor the said charges, nor any of them, before the maturity of the said bills or afterwards, by any remittance whatever; nor have they paid the said acceptances, or any of them, whereby the said plaintiffs were liable to pay and did pay the said several acceptances, and each of them, when they fell due, to wit, to the amount of sixty thousand dollars, of which the said J. & A. Lawrence then and there had notice, to wit, on the days when the said five last mentioned bills of exchange fell due, and also notice of the said charges.

And the said plaintiffs further aver, that the said J. & A. Lawrence have not paid or reimbursed to the said plaintiffs the said sums so paid, and the said charges, nor any part thereof, although by the said plaintiffs afterwards, to wit, on the first day of January, in the year of our Lord one thousand eight hundred and forty, requested so to do; of which default of the said J. & A. Lawrence, the said defendant then and there had notice from the said plaintiffs, and was then and there, to wit, on the first day of January last aforesaid, requested to guaranty the said plaintiffs from the said payments and charges, according to the said promise and engagement of her the said defendant.

Nevertheless, the said defendant, although often requested by the said plaintiffs, hath not guarantied them against the payments so made by them as aforesaid, nor for their charges aforesaid, nor have the said J. & A. Lawrence, nor the said defendants, covered, paid, or reimbursed, the moneys payable upon the said acceptances, or on account of the said charges, nor any part of the same; whereby the said plaintiffs have sustained damages besides the said amounts of money paid, and charges a large sum of money for premium of exchange, namely, ten thousand dollars, to the damage of the said plaintiffs of sixty thousand dollars; and thereof they bring suit, &c.

And now on this day, to wit, the twenty-fourth day of July, A. D. 1840, before the judges aforesaid, (until, &c.,) the said defendants in this suit, by Griffin and Havens, her attorneys, comes

and defends the wrong and injury, when, &c., and says, that she did not undertake and promise in manner and form as the said plaintiffs in this suit have above thereof declared against the said defendants, and of this she puts herself upon the country, and the said plaintiffs likewise, &c.

Therefore, to try the issue above joined, let a jury thereupon come before the judges aforesaid, at the city hall in the city of New York, on the last Monday of November next, twelve, &c., each of whom, &c., and who neither, &c., to recognise, &c., because as well, &c., and the same day is given to the parties aforesaid, at the same place.

And now at this day, that is to say, on this last Monday of November, in the year one thousand eight hundred and forty, before the justices aforesaid, at the place aforesaid, come the parties aforesaid, by their attorneys aforesaid; but because the said issue, so as above joined, was not tried at the term held at the time and place last aforesaid, therefore, the process between the parties aforesaid, is continued until the term to be held at the city hall aforesaid, on the first Monday of April, in the year one thousand eight hundred and forty-one.

And now at this day, to wit, on the first Monday of April, in the year of our Lord one thousand eight hundred and forty-one, at the city hall, in the city of New York, before the judges aforesaid, come as well the above named plaintiffs as the above named defendant, by their respective attorneys above mentioned, and the jurors, of the jury summoned to try the said issue, being called, also come, who to speak the truths of the matters above contained, being chosed, tried, and sworn, say, upon their oath, that the said defendant did undertake and promise in manner and form as the said plaintiffs have above thereof complained against her, and they assess the damages of the said plaintiffs by reason of the premises over and above their costs and charges by them about their suit in this behalf expended, to forty-seven thousand one hundred and five dollars and ninety-five cents, and for those costs and charges, to six cents.

And because the said court, before the aforesaid judges thereof now here, and not yet advised what judgment to give of and upon the premises, therefore, the said cause is duly continued until the first Monday of April, in the year of our Lord one thousand eight hundred and forty-two, and the same day is given to the parties aforesaid, at the same place, to hear the judgment of the said court thereupon.

At which last mentioned day, before the said judges, at the place aforesaid, come as well the said plaintiffs by their attorney aforesaid, as the said defendant by her attorney aforesaid; and thereupon, all and singular the premises being seen, and by the said court now here fully understood, and mature deliberation being thereupon had, it is considered, that the said plaintiffs do recover against the said defendants their damages, costs, and charges, by the jurors aforesaid in form aforesaid assessed; and also three thousand five hun-

dred and eighty-three dollars fifty-four cents, for their said costs and charges by the said court now here adjudged to the said plaintiffs, and with their assent; which said damages, costs, and charges, in the whole amount to fifty thousand six hundred and eighty-nine dollars and fifty-one cents. And the said defendant in mercy, &c.

Judgment signed this 14th day of May, A. D. 1842.

J. W. METCALF, *Clerk.*

CIRCUIT COURT OF THE UNITED STATES,
For the southern district of New York, in the second circuit:

ROBERT McCALMONT,
HUGH McCALMONT, and
WILLIAM JOHNSTONE NEWELL,
vs.
SUSAN LAWRENCE.

Which said issue, in manner aforesaid joined between the said parties, afterwards at the circuit court of the United States, for the southern district of New York, holden at the city of New York, in the said district, before the honorable Samuel R. Betts, one of the judges of said court, on the 29th day of April, in the year 1841, came on to be tried; at which day before the said judge came as well the said plaintiffs as the said defendant, by their respective attorneys aforesaid, and the jurors of the jury, whereof mention is within made, being called, likewise come, and were sworn to try the issue in manner aforesaid joined.

And thereupon, to maintain the said issue on their part, the counsel for the said plaintiffs read in evidence the following paper:

Messrs. McCALMONT, BROTHERS & Co., London:

GENTLEMEN: In consideration of Messrs. J. & A. Lawrence having a credit with your house, and in further consideration of one dollar paid me by yourselves, receipt of which I hereby acknowledge, I engage to you that they shall fulfil the agreements they have made and shall make with you for meeting and reimbursing the payments which you may assume under such credit at their request, together with your charges, and I guaranty you from all payments and damages by reason of their default.

You are to consider this a standing and continuing guaranty, without the necessity of your apprising me from time to time of your engagements and advances for their house; and in case of a change of partners in your firm or theirs, the guaranty is to apply and to continue to transactions afterwards between the firms as changed, until notified by me to the contrary.

Yours, respectfully,

SUSAN LAWRENCE.

NEW YORK, 17th December, 1838.

William Davidson, called by the plaintiffs, testified that he was one of the firm of John Gihon & Co.; that he knew the handwriting of the firm of J. & A. Lawrence, and proved the genuineness of the signatures of J. & A. Lawrence, and of A. T. Lawrence, one of that firm, to the papers produced and read in evidence by the plaintiffs. The plaintiffs then read in evidence the following papers:

NEW YORK, Nov. 22, 1838.

Messrs. McCALMONT, BROS. & Co.

GENT: You will please accept our, Mr. A. T. Lawrence's, dfts. for amount of within credit, in such amounts, and at such times, as he may draw.

Your ob. st.,
J. & A. LAWRENCE.

The preceding letter was endorsed on the one following:

NEW YORK, 21st Nov. 1838.

Messrs. McCALMONT, BROTHERS & Co., London:

GENT: We have granted to Messrs. J. & A. Lawrence of this city, a credit with you of £10,000, say ten thousand pounds sterling, to be availed of within six months from this time, in such drafts as they may direct, at four months date, against actual shipments of goods for their account, and coming to their address; said goods to be forwarded through you or your agents.

The above credit is granted under their engagement to cover your acceptances before maturity, by direct remittances from this country of approved sixty day bills—seconds of exchange to be handed to us for transmission to you. You are to charge 1 per cent. commission on the amount accepted, and to keep the account at 5 per cent. interest per annum.

We are, gents., your ob. st.,
JOHN GIHON & CO.

NOTTINGHAM, Dec'r. 10th, 1838.

Messrs. McCALMONT, BROS. & Co., London:

GENT: I now hand you enclosed, Messrs. J. Gihon & Co.'s letter of credit on you, in favor of my house. J. & A. Lawrence endorsed over to me for £10,000 sterling, and will you please write me, giving authority to draw for the amount? I observe that one of the conditions of the credit is, that goods to the amount of the same shall be shipped through your agents. Will you please inform me the names of the houses in Liverpool and London, through whom you would wish the shipments made? Please address me at this place.

Respectfully, your obt. servts.,
A. T. LAWRENCE.

LONDON, 11th Dec'r., 1838.

A. T. LAWRENCE, esq., Nottingham:

SIR: We have to acknowledge receipt of yours of yesterday's date, covering the letter of credit in your house's favor, opened by our mutual friends, Messrs. John Gihon & Co., say to the extent of ten thousand pounds sterling, to be availed of by drafts on us at 4 mos. against actual shipments of goods for their account, and going to their address; said goods, if shipped from Liverpool, to be forwarded through our agent there, Nathan Caims, esq., India Buildings, or from hence through us, or such shipping agent as you may appoint; but in that case, a copy of the bill of lading to be lodged with us prior to presentation of your drafts, and such drafts to appear within thirty days from date of shipment. This credit to be availed of within six months from the 21st ulto., and your house undertaking to comply with the other stipulations stated in it by Messrs. J. Gihon & Co., viz: that they engage to cover our acceptances before maturity, by direct remittances from United States by approved bills of 60 days, the seconds to be forwarded to us through our agents, Messrs. John Gihon & Co., your house to pay us 1 per cent. commission on the amount of our acceptances and disbursements; the account to be kept at 5 per cent. interest per annum, which credit we hereby confirm to you, trusting that in opening an account with your respectable firm it will lead to a mutually agreeable and profitable correspondence.

We remain, sir, your mo. obedt. servt.,
McCALMONT, BROS. & CO.

It is to be understood that the above credit is the only one you have in Europe. McC., BROS. & CO.

NEW YORK, 12th June, 1839.

Messrs. McCALMONT, BROS. & Co., London:

GENT: With reference to our letter of 21st November last, opening a credit on your goodselves, favor Messrs. J. & A. Lawrence, for £10,000, to be drawn within six months from that date, and which expired by limitation last month, we hereby renew same for a like period from the date hereof, and under the same stipulations, with this proviso, that the bills be drawn by or in favor of parties permanently resident in Europe, and if made from the Continent, they be made at the customary date—say three months.

We remain, gentlemen, yours truly,
JNO. GIHON & CO.

NOTTINGHAM, June 28, 1839.

Messrs. McCALMONT, BROS. & Co.

DEAR SIRS: By the steamer "Great Western," I have received a letter of credit for £10,000, granted to our house by your friends,

Messrs. J. Gihon & Co., on your house, which I now hand you enclosed. £5,000 of the same I wish you to hold subject to the drafts of Messrs. Jones, Gibson & Ord, of Manchester, drawn at such times and for such amounts as they may deem proper. The balance you will hold subject to my draft, or the drafts of such parties as I may advise at the time of their drawing.

I am, gent., your obt. st.,

A. T. LAWRENCE.

It is understood, of course, in case of your confirming the above named credit, that the remittances to meet the drafts drawn against it, shall be in such bills as are approved of by your friends in New York.

LONDON, 5th July, 1839.

Messrs. J. & A. LAWRENCE, New York:

GENT: your favors of 6th and 24th May, were duly received with their enclosed remittances, which you will find at your credit in the annexed statement of your account current to 30th ulto.

This account we hope you will find correct, and the bills about coming due will, we doubt not, have your usual attention.

The further credit for £10,000, on your account opened by Messrs. J. Gihon & Co., we have confirmed to your Mr. A. Lawrence, on the understanding that it is to be met by remittances from New York, satisfactory to J. Gihon & Co.

We are gent., your most ob. st.

McCALMONT, BROS. & CO.

The drawback on your goods per Andrew, has not yet been received in consequence of the wreck of that vessel; we hear from Liverpool, [it] will only be paid on the *goods* that were *lost*.

NOTTINGHAM, July 10th, 1839.

Messrs. McCALMONT, BROS. & Co.

DEAR SIRS: I have this day drawn on you at 4 mos. for one thousand pounds, which please accept and place to account of Messrs. J. & A. Lawrence, N. Y. This draft is made against the shipments stated below, which have gone through your Liverpool house.

Your ob. st.,

A. T. LAWRENCE.

f A								
[L]	* 337 a 339	3 cases	p.	Oxford	- - -	634	11	9
	* 1,020 1,023	4	p.	do	- - -	142	15	6
[Q] A	503 a 506	4	p.	do	- - -	557	0	4

£1,000.] NOTTINGHAM, July 10th, 1839.

Four months after date, pay to the order of Messrs J. & A. Lawrence, in London, one thousand pounds, value received.

Your ob. st.,

A. T. LAWRENCE.

To Messrs. McCALMONT, BROS. & Co., London.

C 451

Acceptance at Messrs. Glyn & Co.

McCALMONT, BROTHERS & CO.

Endorsed—J. & A. LAWRENCE,

P. and per NOTTINGHAM & NOTTS,

Banking Company.

JOHN MILLOR, *Manager.*

BIMLAY & CO.

NOTTINGHAM, July 16, 1839.

Messrs. McCALMONT, BROS. & Co.

DEAR SIRS: I have this day drawn on you at 4 mos. for two thousand pounds, which please accept, and place to account Messrs. J. & A. Lawrence, New York. The present draft is against shipments mentioned below—bill of lading enclosed.

Yours truly,

J. & A. LAWRENCE.

J A									
[L]	* 203	*a* 238	36	cases	p.	B. Queen	1,920	6	0
	1,013	*a* 019	7	"	"	"	1,301	4	6
	330	*a* 336	8	"	"	"	2,439	19	5
	L	340							
[A|V]	195	196	2				155	14	

£2,000.] NOTTINGHAM, 16th July, 1839.

Four months after date, pay to the order of Messrs. J. & A. Lawrence, two thousand pounds, value received.

Your ob. st.,

A. T. LAWRENCE.

To Messrs. McCALMONT, BROS. & Co., London.

Acceptance at Messrs. Glyn & Co.

McCALMONT, BROS. & CO.

Endorsed to NOTTINGHAM & NOTTS'

Banking Company or order.

J. & A. LAWRENCE.

P. P. NOTTINGHAM & NOTTS' *Banking Company,*

JOHN MILLOR, *Manager,*

Pay to Messrs. BARNETT & CO., or order.

OAKES, BEVAN & CO.

BARNETT & CO.

NOTTINGHAM, July 29, 1839.

Messrs. McCALMONT, BROS. & Co.

DEAR SIRS: I have this day drawn on you at 4 mos. for £2,000, say two thousand pounds, which please accept and place to account Messrs. J. & A. Lawrence of New York. This is drawn against shipments pr. B. Queen steamer; bills lading forwarded you.

Your ob. st.,

A. T. LAWRENCE.

£2,000.] NOTTINGHAM, July 29, 1839.

Four months after date, please pay to the order of Messrs. J. & A. Lawrence, in London, two thousand pounds, value received.

A. T. LAWRENCE.

To Messrs. McCALMONT, BROS. & Co., London.

Acceptance at Messrs. Glyn & Co.

McCALMONT, BROS. & CO.

Endorsed—J. &. A. LAWRENCE.

P. P. NOTTINGHAM & NOTTS' *Banking Company.*

JOHN MILLOR, *Manager.*

BIMLAY & CO.

Cross examined. The said William Davidson testified that the said plaintiffs lived in London, none of them were here in the year eighteen hundred and thirty-nine; one house, acting with their authority, received the guaranty in suit; the one dollar mentioned in the guaranty was not paid to my knowledge; the time to write to London and receive an answer is now about forty days; it was at the time in question from forty to fifty days; the one dollar consideration was never demanded from us; the guaranty, excepting the defendant's signature, is in witness's writing.

Again examined by plaintiffs' counsel, he testified that witness received the paper from Mr. T. D. Lawrence, one of the firm now in court. Whether he paid the one dollar to the defendant or not, witness did not know; the plaintiff and witness' house were both solvent for the dollar.

Cross examined again. He testified that when witness drew the guaranty, it lay sometime in his firm's office; the letter of credit was delivered before the guaranty was executed, and at or before the day of the date of the letter of credit. They never requested Mr. Lawrence to pay the one dollar to the defendant. The plaintiffs' counsel then asked the witness whether the letter of credit, of 21st November, 1838, was delivered on an agreement for the guaranty. To this evidence the defendant's counsel objected, as irrelevant and inadmissable. The judge decided that it was admissable for the purpose of showing the nature and character of the plaintiffs' claim on J. & A. Lawrence, but not to vary the construction of

the guaranty, and admitted the evidence; to which the defendant's counsel excepted.

The witness then testified that the said letter of 21st November, 1838, was delivered on Mr. Lawrence's proposal of his mother's security for the credit.

James Heard, called by the plaintiffs' counsel, proved the handwriting of Jones, Gibson and Ord, to the letter and bill of exchange following:

MANCHESTER, 9*th August*, 1839.

Mess. McCalmont, Bros. & Co., London.

DEAR SIRS: We have to advise that we drew upon you, under date of yesterday *a* four months, for £5,741 16 0, to our own order, being for account of the undernamed parties.

£5,000 acc. J. & A. Lawrence p. invoice p. N. Riddle.
OXFORD & SHERIDAN.
652 3 6 acc. J. Reese & Sons, p. Monongahela.
39 12 6 acc. G. B. & J. B. English, p. do

£5,741 16 0

Said draft we recommend to your protection.

Very sincerely yours,
JONES, GIBSON & ORD.

£5,741 16 0.] MANCHESTER, 8*th August*, 1839.

Four months after date pay to the order of ourselves, five thousand seven hundred and forty-one pounds sixteen shillings; value received.

JONES, GIBSON & ORD.

To Mess. McCALMONT, BROS. & Co., London.

Acceptance at Mess. Glyn & Co.

McCALMONT, BROS. & CO.

Endorsed: JONES, GIBSON & ORD.

P. p. Manchester and Salford Bank.

P. M. JAMES.

Pay Mess. Jones, Lloyd & Co., or order, value in account with the Commercial Bank of Scotland.

ROBERT PAUL, *Manager*.

JONES, LLOYD & Co.

The plaintiffs' counsel next read the following papers:

NEW YORK, 31*st Oct.*, 1839.

Mess. McCALMONT, BROS. & Co., London.

GENT: We were in hopes that we should have been enabled, ere this, to have made you a remittance to meet your accep-

tances for our acct. due 13th and 19th Nov., but such is the state of our money market, that it is almost impossible to get money at any rate. The best of our commercial paper is offered freely at 3 and 4 p. cent p. month discount; and owing to the deranged state of our internal exchanges, it is impossible to collect amounts due us in other cities, except at a ruinous rate. Exchange on Phila., only 96 miles from this, is 15 per cent. discount to-day. Under all these circumstances, we have to beg a little indulgence on your part. We shall remit you the moment it is in our power. We have offered your friends, Messrs. John Gihon & Co., to place our business paper in their hands in settlement, but they have declined at present. Browns and other bankers are settling in this way.

We are gent'n, resp'y, &c.
J. & A. LAWRENCE.

NEW YORK, *May* 30, 1840.

Mess. MCCALMONT, BROS. & Co., London.

GENT: Your favor of 24th Jan'y came duly to hand, enclosing your account current with us to 31st Dec'r last, showing balance due you on that day of £10,349 8 5—say ten thousand three hundred and forty-nine pounds 8 5; which we find correct. On 18th March last, we made a payment on your account to Mess. J. Gihon & Co. of $11,822 26—say eleven thousand eight hundred and twenty-two $\frac{26}{100}$ dollars, for which we have their acknowledgment as your agents.

Respectfully, your ob't. st.
J. & A. LAWRENCE.

William Davidson, again called by the plaintiffs' counsel, was asked, whether at the time of the renewal of the credit in June, 1839, a conversation took place with Mr. Lawrence respecting the application of the guaranty to it; to which the defendant's counsel objected; but the judge admitted the same, to show the nature and character of the plaintiffs' claim on J. & A. Lawrence, but not to effect the construction of the guaranty; to which the defendant's counsel excepted. The witness then testified that Mr. Lawrence, on that occasion, called on him, and asked if it was agreeable for witness's firm to continue the credit for ten thousand pounds. Witness replied, that he had no objection to continue it on the same terms as before; stating that it was to be on his mother's guaranty attached to the previous credit; he answered that he did not expect it on any other terms, or without the guaranty. Witness was in a hurry, and said that he should refer to it, to find out whether the guaranty was for a particular credit, or was a continuing guaranty. Witness afterwards referred to the letter of guaranty, and subsequently drew up the letter continuing the credit, and delivered it

to Mr. J. D. Lawrence, and exhibited to him his mother's letter; he read it.

The plaintiffs' counsel then offered to prove, that both the house of J. Gihon & Co., and J. & A. Lawrence acted upon the guaranty as a continuing guaranty. To this, the defendants' counsel objected; but the judge admitted the evidence, for the purpose of showing that both acted upon it as a continuing guaranty, but not to vary the construction of the guaranty itself; to which the defendant's counsel excepted. The witness then testified, that Mr. Lawrence and he both agreed that it was a continuing guaranty, and as such no new letter was needed.

Witness testified that their house received sundry bills, receivable, understood and represented to be business paper, not at maturity when received, to be collected and realised, as far as they could do it, and the proceeds to be remitted to the plaintiffs for the credit. It was a distinct understanding between witness's firm and J. & A. Lawrence, that they received this paper subject to its encashment, on being paid at maturity. Witness has had a statement made of the proceeds of the paper thus deposited. Witness's firm had realized from it, and remitted £1,309 16 6. The amount due on the plaintiffs' said account with J. & A. Lawrence, crediting those remittances, and charging interest to the third day of May instant, is £9,712 11 4—amounting in dollars, at $4 85 to the pound sterling, to forty-seven thousand one hundred and five dollars ninety-five cents.

The plaintiffs' counsel gave in evidence the following account current:

Dr. *Mess. J. & A. Lawrence in account current with McCalmont, Bros. & Co.* Cr.

1839.									1839.								
July 1	To balance bro't down	30 June	157	0	9	184	3	19	2	July 18	By bill on Royal Bank, L'pool - -	20 Sep.	1,000			102	13	19	5
"	" acceptance do	21 July	5,000			163	22	6	7										
"	do do	2 Aug.	1,500			151	31	0	6	22	" 2 Wm. Mills -	25 "	1,500			97	19	18	8
13	" Dft. p. A. T. Laurence	13 Nov.	1,000			48	6	11	6	Dec. 31	" transfer from McC. B. & Co. acc. dyed goods	30 Dec.	155	16	11	1			5
17	" do do	19 "	2,000			42	11	10	2										
29	" do do	2 Dec.	2,000			29	7	18	11	"	Bal. int. to dr. - -	—		—			64	9	9
Aug. 10	" do Jones, Gibson & Ord - -	11 "	5,000			20	13	14		"	Balance due McC. Bros. & Co. - -	31 "	10,349	8	5				
Nov. 15	" bal. McC. B. & Co. acc. for ship'g charges	31 "	17	0	4														
Dec. 31	" 1 day's int. on dfts.	—	—				1	7	5										
"	" Int. to do £	64 9 9																	
	Add 1-5th	12 17 11	77	7	8														
"	" com'n on £10,017 4 c. 1 p. c. - -	100 3 5																	
"	" do for new prov'n 10,157 9 c. 1½ p. c.	152 7 1	252	10	6														
"	" postages - -	—	1	6	1														
			13005	5	4	98	8	3					13,005	5	4	98	8	3	
1840.		1839.																	
Jan. 1	To balance bro't down	31 Dec.	10349	8	5														

E. E.

LONDON, 1*st January*, 1840.

(Signed,) McCALMONT, BROS. & CO.

Mess. J. & A. Lawrence in account with McCalmont, Bros. & Co.

Jan. 1, '40, to balance as per account ren'd, due Dec. 31, '39 -	£10,349 8 5	489	£693 5 4
Cr. due.			
By bill from Jno. Gihon & Co. Nov. 5, '40 - - - -	£500	179	£12 5 2
Jan. 5, '41	400	118	6 9 4
Apl. 5,	409 16 6	28	1 11 5
	£1,309 10 6		£20 5 11
	£9,039 11 11		
Balance of interest,	672 19 5		
Balance on cash, May 3, '41,	£9,712 11 4		

New York, April 30, '41.

The defendant's counsel then proved by this witness, and read, the following letters:

London, 29*th June*, 1839.

A. T. Lawrence, Esq., Nottingham.

Dear Sir: We have received your favor of yesterday, and should of course not hesitate in complying with the credit opened for you with us by J. Gihon & Co., but that we conceive it superseded by what passed with you here.

Yours, truly,
McCALMONT, BROS. & CO.

New York, *March* 18, 1840.

Mess. J. & A. Lawrence, New York.

Gent: We beg to acknowledge receipt of your favor of this date, handing us 29 notes amounting to $11,822 26, (say eleven thousand eight hundred and twenty-two $\frac{26}{100}$ dollars,) which we hold for account of Messrs. McCalmont, Bros. & Co., London, subject to encashment. Your obt. servt.

JNO. GIHON & CO.

We look for a further payment in notes, as well as some cash, as the "British Queen" sails on 1st prox'o. J. G. & CO.

London, 31*st Dec.*, 1840.

A. T. Lawrence, Esq., Nottingham.

Sir: We duly received your favor of the 27th, and the draft therein advised for £2,000 has had our protection, relying upon provision being made for it direct from your house at New York, agreeably to the letter of credit.

We annex a circular announcing our establishment at L'pool, and beg you will forward your goods in future to them for shipment. We are, sir, your mo. obt. servts.,

McCALMONT, BROS. & CO.

To the above letter was annexed the circular following:

LONDON, 1*st January*, 1839.

A. T. LAWRENCE, Esq., Nottingham.

SIR: We beg to inform you, that for the purpose of promoting our general commission business, we have established our firm at Liverpool, in connection with and under the direction of Mr. Charles Saunders, who has hitherto conducted our house at Pernambuco; the management of which remains with his brother, Mr. Frederick Saunders.

With a tender of our services at Liverpool, and referring to the signature of Mr. C. Saunders at foot,

We remain, respectfully, your obt. servts.

McCALMONT, BROS. & CO.

Signature of Mr. CHARLES SAUNDERS,
McCALMONT, BROS. & Co.

This witness, cross examined, further testified that he could not recollect the names of the notes handed over by J. & A. Lawrence as above stated; they were drawn at various dates, in the usual form of negotiable promissory notes; some payable to J. & A. Lawrence, or order, and others payable to the order of others, and endorsed by them, and all endorsed by J. & A. Lawrence, and we were assured by Mess. J. & A. Lawrence that they were business paper.

The defendants' counsel then admitted the service of a notice to produce the letter, dated May 29, 1840, next mentioned, and were called on to produce the same; which not being done, the plaintiffs' counsel called as a witness James F. White, who testified that he delivered at the defendant's house in Brooklyn, a letter with an account, of which the witness produced a copy identified with his initials, and thereupon the plaintiffs' counsel then read in evidence the said copy of letter and account:

NEW YORK, *May 29th*, 1840.

Mrs. SUSAN LAWRENCE.

MADAM: We enclose on behalf of Mess. McCalmont, Bros. & Co., a copy of the account of Messrs. J. & A. Lawrence with them, showing a balance due of £10,349 8 5—say ten thousand three hundred and forty-nine pounds eight shillings and five pence sterling—on first January last, with interest. These gentlemen not having fulfilled their engagements to reimburse this account, we claim payment of you under your guaranty to Mess. McCalmont, Bros. & Co. Respectfully, yours,

JOHN GIHON & CO.,
Agents of McCalmont, Bros. & Co. of London.

DR. *Mess. J. & A. Lawrence, New York, in account current with McCalmont, Bros. & Co.* CR.

1839.		1839.				1839.				
July 1	To balance bro't down -	30 June	157 0 9	184	3 19 2	July 18	By bill on Royal Bank, L'pool - -	20 Sep.	1,000	102 13 19 5
"	" acceptance do -	21 July	1,000	163	22 6 7					
"	" do do -	2 Aug.	1,500	151	31 0 6	22	" 2 Wm. Mills -	25 "	1,500	97 19 18 8
13	" Dft. p. A. T. Lawrence	13 Nov.	1,000	48	6 11 6	Dec. 31	" transfer from McC. B. & Co. acc. dye goods -	30 Dec.	155 16 11	1 5
17	" do do -	19 "	2,000	42	11 10 2		" balance int. to Dr. -	-	-	64 9 9
29	" do do -	2 Dec.	2,000	29	7 18 11		" balance due McC. B. & Co. - -	30 "	10,349 8 5	
Aug. 10	" do Jones, Gibson & Ord - -	11 "	5,000	20	13 14 0					
Nov. 15	" bal. of McC. B. & Co. for shipping charges -	31 "	17 0 4							
Dec. 31	" 1 days int. on dfts. -	-	-		1 7 5					
"	Int. to Dr. £	64 9 9								
	Add 1-5th	12 17 11	77 7 8							
	Com'n on £10,007 4 1 p. c.	100 3 5								
	do for new prov'n on 10,157 9 c. 1½ p. c. -	152 7 1	252 10 6							
	Postages - -	-	1 6 1							
			13,005 5 4		98 8 3				13,005 5 4	98 8 3
1840.		1839.								
Jan. 1	To balance bro't down -	31 Dec.	10,349 8 5							

E. E.

LONDON, *January* 1, 1840.

(Signed,) McCALMONT, BROS. & CO.

And the plaintiffs then rested their case.

The defendant's counsel then recalled the said William Davidson, who testified that remittances were considered as due here under the credit with Messrs. J. & A. Lawrence, about thirty days before the acceptances came due in England, and the seconds of exchange ought to have been lodged with witness's house about thirty days before the latter period, unless some satisfactory explanation or excuse was given by the Mess. Lawrence. That, for the bills due in England in November, the exchange should have been remitted in October to cover the amount. There was a failure in the Messrs. Lawrence's remittances about the early part of November, when they should have remitted, but did not, on the 13th and 19th of October, 1839; at which times they ought to have remitted £3,000 sterling. On the 2d of November, 1839, when they should have remitted to the amount of £2,000 sterling; and on the 11th November, £5,000. No part of these sums has been remitted at all. It is admitted on the part of the plaintiffs, that nothing is claimed under the first credit.

The defendant's counsel then called William J. Allen, who testified that he had known J. & A. Lawrence in the year 1838, and to the present time; they resided in Brooklyn, and their counting house was in New York during all this period.

Cross examined, testified that the defendant lived at Brooklyn—her sons, J. & A. Lawrence, lived in the same house with her; they failed in the end of the year 1839. Witness cannot tell it exactly; their failure was notorious when it took place, in the latter part of thirty-nine or in 1840—can't state the particular time.

The defendants having objected that the plaintiffs ought to be charged with all the notes which had been delivered to J. Gihon & Co., in March, 1840, which had been dishonored, and of which dishonor J. & A. Lawrence had not been duly notified as endorsers; the plaintiffs contended to the contrary, but nevertheless produced notarial certificates of the protest and notice to J. & A. Lawrence of the notes so delivered, as follows:

R. C. Hance & Co.'s note, protested 13th May, 1840; notice to endorsers, J. & A. Lawrence, 14th May, 1840.

George Farmer's note, protested 27th June, 1840; notice to endorsers, J. & A. Lawrence.

Wm. Jenkins & Co.'s note, protested 12th May, 1840; notice to endorsers, J. & A. Lawrence (not now produced).

Lester West's note, protested, 12th May, 1840; notice to endorers, J. & A. Lawrence, 3d May.

John R. Case's note, protested 10th June, 1840; notice to endorsers, J. & A. Lawrence, 10th June.

Francis A. Fuller's note, protested October 28, 1840; notice to endorsers (not now produced).

The defendants rested their defence.

The counsel for the defendant then asked the court to charge the jury upon the points of law arising in the case, as follows, viz:

First. That the said credit of 21st November, 1838, is a standing and continuing credit during the six months.

Second. That defendant's guaranty of 17th December, 1838, is confined to the said credit, both as to time and amount.

Third. That the acceptances and claims of the plaintiffs demanded in their declaration in this suit, are not covered by the guaranty of the defendant aforesaid.

Fourth. That the new credit aforesaid of the 12th *of the* 12*th* of June, 1839, is not a continuance or repetition of the first credit, but a departure from it, and is not covered by or embraced in the defendant's said guaranty.

Fifth. That the nominal consideration of one dollar, and the past consideration stated in defendant's said guaranty, are not, nor is either of them, sufficient to sustain the said guaranty.

Sixth. That the evidence that the said J. & A. Lawrence agreed to give a guaranty at the time said credit of 21st November, 1838, was given, is not sufficient in law to render valid the consideration expressed in defendant's said guaranty, or to sustain the said guaranty.

Seventh. The facts being ascertained, the question whether the notice given to the defendant by the plaintiffs of the failure of the said J. & A. Lawrence to remit to cover the plaintiffs' acceptances was reasonable, is a question of law, and no notice, sufficient in law, was given of such failure to the defendant.

Eighth. If the sufficiency of such notice be a question exclusively of fact, a reasonable and sufficient notice was not given to her of such failure of J. & A. Lawrence to remit as aforesaid.

Ninth. The notes received by the plaintiffs, through their agents to collect, ought, when there was a failure of payment, to have been regularly protested, and due notice thereof served on the defendant and J. & A. Lawrence; and, on failure thereof, a credit should be allowed for the same.

The judge thereupon charged the jury, that the plaintiffs were not precluded from recovering under the guaranty in evidence by reason of any supposed want of consideration therefor; and the same was not without sufficient consideration.

That the said guaranty of the 17th December, 1838, was not limited to the credit of November 21, 1838, but was a standing and continuing guaranty, and did apply to, and was sufficient to embrace, transactions arising after the said credit of November, 1838, was expired.

That the new credit of June 12, 1839, and the advances and transactions under it, were not in law without the scope of the guaranty of Dec. 17, 1838, and that the plaintiffs were, under the evidence, entitled to recover for the same under the said guaranty.

That the defendant was entitled to a reasonable notice of the de-